

# ANDERSON KILL P.C.

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May 4, 2018

**By ECF and Courtesy Copy by Facsimile**

Hon. Paul G. Gardephe  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2204  
New York, New York 10007

**Re: XL Specialty Insurance Company v. Prestige Fragrances, Inc.  
Case No. 18-cv-00733 (PGG)**

Dear Judge Gardephe:

Defendant/Counterclaim Plaintiff Prestige Fragrances, Inc. ("Prestige") respectfully seeks permission to amend the Answer portion of its Answer and Counterclaims. Plaintiff/Counterclaim Defendant XL Insurance Company ("XL Speciality") has consented in writing to this request.

At the April 26, 2018 Initial Pre-Trial Conference, the Court granted Prestige leave to amend its Counterclaims. In preparing its amended Counterclaims, Prestige determined that it wished to add the word, "ratification," to a paragraph in the "Affirmative Defenses" section of its Answer. The paragraph would then read: "XL Insurance's claims are barred, in whole or in part, by the Doctrines of **Ratification**, Estoppel and Waiver, as XL Insurance was informed that Prestige did not maintain 'loss runs' and, with this express knowledge, XL Insurance, nonetheless, elected to sell insurance to Prestige without the existence of loss runs and without any completed insurance application from Prestige."

Although XL Specialty consents to this amendment, Prestige seeks permission of the Court as a precaution. The Court permitted Prestige to amend its Counterclaims, but did not address any other amendments. While Fed. R. Civ. P. 15(a)(2) permits an amendment based on written consent of the opposing party, the May 2, 2018 Civil Case Management Plan and Scheduling Order provides for amendment of pleadings only upon leave of Court (the "Scheduling Order"). [Doc. No. 17 at ¶ 4]. Accordingly, Prestige makes this request to avoid violating the Scheduling Order.


Prestige is prepared to file an application seeking leave to amend, with the proposed amended pleading attached as an exhibit, should the Court prefer.

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We thank the Court in advance for its consideration of this request.

Respectfully submitted,



Dennis J. Nolan

cc: All Counsel of Record (By ECF)